National Energy Board | Office national de l'énergie

Reasons for Decision

Multi-Client

RH-R-2-94

October 2009

Review of RH-2-94
Cost of Capital

Canada

National Energy Board

Reasons for Decision

In the Matter of

Multi-Client

Review of RH-2-94
Cost of Capital

RH-R-2-94

October 2009

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Introduction

The RH-2-94 Multi-Pipeline Cost of Capital Decision approved the cost of capital for six National Energy Board (Board) regulated pipelines.[1] That decision set individual deemed capital structures for each pipeline, and a single return on common equity (ROE) of 12.25 per cent for 1995 for all six pipelines. That decision also established an automatic adjustment mechanism (the RH-2-94 Formula) which annually adjusted the ROE for 75 per cent of the change in the forecasted long-term Government of Canada bond yield.

On 23 March 2009, the Board issued a letter indicating that the Board had decided to consider whether it should initiate a review of the RH-2-94 Decision, and invited comments on this matter. Prior to the close of the comment period, in response to initial comments received, the Board issued a letter on 1 May 2009 reaffirming the process set out in the 23 March 2009 letter. After considering parties' submissions, the Board indicated in a 3 July 2009 letter that it had decided to initiate a review of the RH-2-94 Decision. The Board invited supplementary comments, including on three specific possible outcomes of the review. The Board released its Reasons for Decision on 8 October 2009, as an attachment to a letter.

For ease of reference, the Board has amalgamated these four letters, including the 8 October 2009 Reasons for Decision, into a single document and has included a list of abbreviations and glossary of terms for ease of reading. The distribution lists which were attached to the Board's four letters were all similar to one another, and so the Board has reproduced only the final one that was attached to the 8 October 2009 Board letter.

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1 The six pipelines were: TransCanada PipeLines Limited, Westcoast Energy Inc., Foothills Pipe Lines Ltd., Alberta Natural Gas Company Ltd, Trans Québec & Maritimes Pipeline Inc., and TransMountain PipeLine Company Ltd. In addition, two other Group 1 pipelines, Trans-Northern Pipeline Inc. and Interprovincial Pipe Line Inc., were initially part of the RH-2-94 proceeding but did not ultimately have their cost of capital set by the RH-2-94 Decision as a result their having reached settlements prior to the release of the Board's RH-2-94 Decision.

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Abbreviations

Board or NEB	National Energy Board
CAPP	Canadian Association of Petroleum Producers
IGUA	Industrial Gas Users Association
KMC	Kinder Morgan Canada Inc.

Glossary of Terms

Capital structure	The way in which a business is financed; generally expressed as a percentage breakdown of the types of capital employed
Deemed capital structure	A notional capital structure used for rate-making purposes that may differ from a company's actual capital structure
RH-2-94	NEB Multi-Pipeline Cost of Capital Proceeding (Reasons for Decision dated March 1995)
RH-2-94 Formula or Formula	Formula used to determine the rate of return on common equity for certain NEB-regulated pipelines, established in the RH-2-94 proceeding, as amended to eliminate rounding

Chapter 1

8 October 2009 Decision

1.1 Background

On 23 March 2009, the National Energy Board issued a letter advising that it had decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision[2]. The Board solicited comments from interested persons on whether they believed that the RH-2-94 Decision should be reviewed, and set a deadline for comments of 25 May 2009.

On 3 July 2009, after considering the submissions received, the Board initiated a review of the RH-2-94 Decision by seeking comments on the continuing applicability of the RH-2-94 Decision, and possible outcomes of the review. The Board indicated that parties need not file any further submissions unless they had supplementary comments not covered by their earlier filings. The Board invited parties to comment on the following possible outcomes and to suggest alternative outcomes.

- The RH-2-94 Decision remains in effect, without prejudice to parties filing company specific applications to depart from the RH-2-94 Decision.
- The RH-2-94 Decision will not continue to be in effect and an appropriate method of and timing for transition for any pipeline still subject to the RH-2-94 Decision, and those pipelines utilizing the RH-2-94 Formula, will be implemented.
- The initiation of a generic process, which could be a formal generic hearing, or any other process developed by interested parties, to examine the manner in which, going forward, the Board should address the cost of capital.

The Board set a deadline for comments of 18 September 2009. The Board considered the submissions from all parties in reaching a decision.

1.2 Views of the Board

The initial decision that the Board must address is whether there is a doubt as to the correctness of the RH-2-94 Decision.

In the RH-2-94 Reasons for Decision, the Board stated that it was "not setting a limit on the life of the [adjustment] mechanism and it does not expect to reassess the rate of return on common equity in a formal hearing for at least three years."[3] Further, the Board stated that it "also

2 National Energy Board, RH-2-94 Reasons for Decision, TransCanada PipeLines Limited, Westcoast Energy Inc., Foothills Pipe Lines Ltd., Alberta Natural Gas Company Ltd, Trans Québec & Maritimes Pipeline Inc., Interprovincial Pipe Line Inc., TransMountain PipeLine Company Ltd., Trans-Northern Pipeline Inc. Cost of Capital, March 1995.

3 *Ibid.*, at p. 32

expects that the capital structure set in this hearing for each of the pipelines will endure for an extended period of years."[4] Thus, it is clear that the Board expected the RH-2-94 Decision to remain in place for at least some time. However, in the Board's view, 15 years is a significant passage of time in the context of financial regulation. The Board notes that since 1994, there have been considerable changes in financial and economic circumstances.

Based on these considerations, the Board is of the view that there is a doubt as to the ongoing correctness of the RH-2-94 Decision.

Having reached this conclusion, the Board must turn to how it should proceed with respect to cost of capital determinations.

The Board is of the view that the circumstances surrounding cost of capital decisions today are different from those which faced the Board and industry prior to 1994. The Board notes that leading up to the RH-2-94 proceeding, litigated rate cases were the norm. Since that time, negotiated settlements have become common practice. The Board notes that parties have diverging views as to the role of the RH-2-94 Decision in facilitating settlements. In the Board's view, it cannot be determined whether the facilitation of settlements was due to the RH-2-94 Decision alone, or also as a result of the Board's decision in August 1994 that it would accept or reject settlements in their entirety[5], or for other reasons such as the development in that era of pipeline/stakeholder task forces. Whatever the reason, given the vast experience the industry has gained in reaching negotiated settlements over the past 15 years, the Board is of the view that it is neither necessary nor appropriate to replace the RH-2-94 Decision with another multi-pipeline cost of capital decision at this time. Accordingly, the RH-2-94 Decision will not continue to be in effect.

The Board's decision not to pursue a multi-pipeline approach does not preclude the Board from doing so at a future date.

Given the reference to the RH-2-94 Formula in some current settlements, for the convenience of parties the Board will continue to publish the return on equity resulting from the Formula in late 2009 (2010 result) and 2010 (2011 result), and, if requested by parties, beyond 2010.

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4 *Ibid.*

5 National Energy Board letter dated 23 August 1994 "Negotiated Settlements of Traffic, Tolls and Tariffs", File No. 4600-1000-3.

Appendix I

23 March 2009 Board Letter

23 March 2009

To: Parties Named in the Attached Distribution List

Submissions related to whether the Board should review the Multi-Pipeline Cost of Capital Decision (RH-2-94)

The National Energy Board has decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision at this time. As a first step, the Board is soliciting comments from interested persons on whether they believe that the Decision should be reviewed. Those providing comments should include the grounds for their submission along with their views on the process which should be used and the issues to be considered if a review is held.

Submitters are asked to provide their comments by filing them with the Board by **noon, Calgary time, Monday, 25 May 2009.**

After considering the submissions, the Board will inform parties of its intentions with respect to subsequent initiatives, if any.

Companies in Part A of the attached Distribution List are directed to serve forthwith a copy of this letter on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

Appendix II

1 May 2009 Board Letter

File Of-Tolls-TollsGen-COC 01
1 May 2009

To: Parties Named in the Attached Distribution List

Submissions related to whether the Board should review the Multi-Pipeline Cost of Capital Decision (RH-2-94)

On 23 March 2009, the National Energy Board issued a letter advising that it had decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision at this time. As a first step, in that letter the Board solicited comments from interested persons on whether they believe that the RH-2-94 Decision should be reviewed. The Board indicated that those providing comments should include the grounds for their submission along with their views on the process which should be used and the issues to be considered if a review is held. The Board set a deadline for comments of noon, Calgary time, Monday, 25 May 2009. The Board stated that after considering the submissions, it would then inform parties of its intentions with respect to subsequent initiatives, if any.

In response to the Board's 23 March 2009 letter, the Canadian Association of Petroleum Producers (CAPP) sent a letter to the Board on 15 April 2009. In it, CAPP recommended that the Board consider using an alternative process that would see the Board "issue a discussion paper on cost of capital to focus the submissions of interested parties." CAPP indicated that it understood that this would alter the Board's plan for the process, but that CAPP believed that it "would be more efficient overall, ensuring that all parties have the opportunity to comment on specific alternatives and reducing the time and cost associated with the overall process."

Subsequently, three parties have sent letters to the Board addressing CAPP's proposal. On 15 April 2009, the Ontario Ministry of Energy and Infrastructure submitted a letter in which it agreed that a Board issued discussion paper would lead to efficiency gains. On 17 April 2009, the Industrial Gas Users Association (IGUA) submitted a letter stating that while IGUA sees merit in CAPP's proposal, the need for a discussion paper would only arise if the Board first decides to initiate a review of RH-2-94, after having reviewed parties' comments filed by 25 May 2009. Finally, on 24 April 2009, Kinder Morgan Canada Inc. (KMC) submitted a letter stating that in its view it would be premature for the Board to consider CAPP's request and noting that KMC expects that its 25 May 2009 submission will address CAPP's proposal.

After considering these letters, the Board has decided that it will not issue a discussion paper at this time and the Board will continue with the approach outlined in its 23 March 2009 letter. The Board notes that, as indicated above, the 23 March 2009 letter invited comments on "the process which should be used ... if a review is held". After 25 May 2009, the Board will consider all submissions, including CAPP's proposal, regarding any such process.

Companies in Part A of the attached Distribution List are directed to serve a copy of this letter on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Parties are advised that copies of correspondence related to this process can be found on the Board's Regulatory Documents Repository (accessible by visiting the Board's Internet site at www.neb-one.gc.ca. Click on the "View" link under the Regulatory Documents heading). In the Repository, click on "Group 1 Gas" or "Group 1 Oil". Then click on "Multi-Client Cost of Capital (RH-2-94)"; then click on "1994-06-20 Cost of Capital (RH-2-94)"; and finally click on "2009-03-23 - Request for Comments on Review of RH-2-94 Decision". Alternatively, some recent filings may be found by clicking on "Inbox" from the Repository home.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

Appendix III

3 July 2009 Board Letter

File Of-Tolls-TollsGen-COC 01
3 July 2009

To: Parties Named in the Attached Distribution List
Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

Background

On 23 March 2009, the National Energy Board issued a letter advising that it had decided to consider whether it should initiate a review, pursuant to section 21 of the *National Energy Board Act*, of the RH-2-94 Decision. The Board solicited comments from interested persons on whether they believe that the RH-2-94 Decision should be reviewed. The Board indicated that those providing comments should include the grounds for their submission, along with their views on the process which should be used and the issues to be considered if a review is held. The Board set a deadline for comments of noon, Calgary time, Monday, 25 May 2009.

Decision and Further Process

Having considered the submissions of parties, the Board has decided to initiate a review of the RH-2-94 Decision by seeking comments on the continuing applicability of the RH-2-94 Decision. Interested persons are asked to provide comments by filing them with the Board by **noon, Calgary time, Friday, 18 September 2009.**

The Board will take into account comments already filed on this matter pursuant to its 23 March 2009 letter when making its decision. Parties need not file any further submissions unless they have supplementary comments not covered by their earlier submissions.

In providing their submissions, parties may wish to provide comments on the following possible outcomes.

- The RH-2-94 Decision remains in effect, without prejudice to parties filing company-specific applications to depart from the RH-2-94 Decision.
- The RH-2-94 Decision will not continue to be in effect and an appropriate method of and timing for transition for any pipeline still subject to the RH-2-94 Decision, and those pipelines utilizing the RH-2-94 Formula, will be implemented.
- The initiation of a generic process, which could be a formal generic hearing, or any other process developed by interested parties, to examine the manner in which, going forward, the Board should address the cost of capital.

Interested parties may suggest alternative outcomes when providing comments on whether the Board should depart from the RH-2-94 Decision. For example, parties could suggest a

collaborative process led by interested stakeholders, in lieu of or in combination with the above possible outcomes, to develop a proposal for the Board's consideration and approval.

Notice and Accessibility of Correspondence

Companies in Part A of the attached Distribution List are directed to serve a copy of this letter on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Parties are advised that copies of correspondence related to this process can be found on the Board's Regulatory Documents Repository (accessible by visiting the Board's Internet site at www.neb-one.gc.ca. Click on the "View" link under the Regulatory Documents heading). In the Repository, click on "Group 1 Gas" or "Group 1 Oil". Then click on "Multi-Client Cost of Capital (RH-2-94)"; then click on "1994-06-20 Cost of Capital (RH-2-94)"; and finally click on "2009-03-23 - Request for Comments on Review of RH-2-94 Decision". Alternatively, some recent filings may be found by clicking on "Inbox" from the Repository home page.

Yours truly,

Claudine Dutil-Berry
Secretary of the Board

Appendix IV

8 October 2009 Board Cover Letter

File OF-Tolls-TollsGen-COC 01
8 October 2009

To: Parties Named in the Attached Distribution List
Review of the Multi-Pipeline Cost of Capital Decision (RH-2-94)

On 3 July 2009, the Board initiated a review of the RH-2-94 Decision. Enclosed is the Board's decision on this matter.

For ease of reference, the Board has decided to issue this decision, and the Board's related letters dated 23 March, 1 May and 3 July, all 2009, together in a single blue book document later this year.

The Board directs companies in Part A of the attached Distribution List to serve a copy of this letter and the enclosed decision on their shippers and interested parties, including parties to their latest tolls decision or settlement. They need not serve a copy on any person listed in Part B.

Parties are advised that copies of correspondence related to this process can be found on the Board's Regulatory Documents Repository (accessible by visiting the Board's Internet site at www.neb-one.gc.ca. Click on the "View" link under the Regulatory Documents heading). In the Repository, click on "Group 1 Gas" or "Group 1 Oil". Then click on "Multi-Client Cost of Capital (RH-2-94)"; then click on "1994-06-20 Cost of Capital (RH-2-94)"; and finally click on "2009-03-23 - Request for Comments on Review of RH-2-94 Decision".

Yours truly,

Anne-Marie Erickson
Acting Secretary of the Board

Appendix V

Distribution List attached to 8 October 2009 Board Cover Letter

Method of Service – Mode de service
Efile Notification/Signification par voie électronique
Facsimile/télécopieur
Mail/courier

Part A/Partie A

Alliance Pipeline Ltd.	rob.power@alliance-pipeline.com
Enbridge Pipelines Inc.	helene.long@enbridge.com
Enbridge Pipelines (NW) Inc.	ralph.fischer@enbridge.com
Express Pipeline Limited Partnership	brenda_mcclellan@kindermorgan.com
Foothills Pipelines Inc.	murray_sondergard@transcanada.ca
Gazoduc Trans Québec & Maritimes Inc.	botis@gazoductqm.com
Kinder Morgan Cochin ULC	brenda_mcclellan@kindermorgan.com
Maritimes & Northeast Pipeline Management Ltd.	ileadley@spectraenergy.com
NOVA Gas Transmission Ltd.	greg_szuch@transcanada.com patrick_keys@transcanada.com
TransCanada PipeLines Limited	murray_sondergard@transcanada.com
Trans Mountain Pipeline Inc.	brenda_mcclellan@kindermorgan.com
Trans-Northern Pipelines Inc.	jlang@tnpi.ca
Westcoast Energy Inc., carrying on business as Spectra Energy Transmission	melthorp@spectraenergy.com

Part B/Partie B

(List of Interested Parties – RH-2-94 – Liste des parties intéressées)

Alberta Department of Energy	regaffairs.energy@gov.ab.ca
B.P. Canada Energy Co.	cheryl.worthy@bp.com
BC Hydro and Power Authority	bchydroregulatorygroup@bchydro.com
City of Calgary	Mark.Rowe@calgary.ca
Canadian Association of Petroleum Producers	jardine@capp.ca
Canadian Energy Pipeline Association	brendakenny@cepa.com
Canwest Gas Supply Inc.	mail / courrier
Centra Transmission Holdings Inc.	jbrophy@efgroupllc.com
Centra Gas Manitoba Inc.	baczarnecki@hydro.mb.ca
Council of Forest Industries of British Columbia	mauch@cofi.org
Enbridge Gas Distribution	tania.persad@enbridge.com
EnCana Corporation	rinde.powell@encana.com
Export Users Group	weislawe@shaw.ca
Gaz Métro	kasselin@gazmetro.com
Huntingdon International Pipeline Corporation	604-592-7620
Imperial Oil Resources	ronald.moore@esso.ca
Industrial Gas Users Association	mnewton@igua.ca
New England Power Company	508-389-2605
Northern Border Pipeline Company	Loretta.McGowan@Nborder.com
Plains Marketing Canada, L.P.	403-233-0399
Province of Ontario	416-326-6996

Province de Québec	418-643-7524
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Shell Canada Limited	paul.m.davies@shell.com
Terasen Gas Inc.	regulatory.affairs@terasengas.com
Teck Cominco Metals Ltd.	604-631-3232
TransAlta Corporation	403-267-2575
Union Gas Limited	pplanting@uniongas.com

(Other Pipeline Companies/ Autres sociétés pipelinières)

1057533 Alberta Ltd. / Harvest Operations Corp	403-265-3490
2193914 Canada Limited	tania.persad@enbridge.com
Abitibi-Consolidated Company of Canada	514-394-3624
Agent and General Partner of the Pembina North Ltd. Partnership Pouce Coupé Pipe Line Ltd.	dzacharias@pembina.com
AltaGas Pipeline Partnership	403-691-7576
Apache Canada Ltd.	anita.bianchie@apachecorp.com
ARC Resources Ltd.	lpelletier@arcresources.com
ATCO Utilities	780-420-7400
Bear Paw Processing Company (Canada) Ltd.	701-565-2229
Berens Energy Ltd	403-265-5587
Burlington Resources Canada (Hunter) Ltd.	403-260-6000
Canada Border Services Agency	306-780-7750
Canadian Natural Resources Limited	bryan.bradley@cnrl.com
Canadian – Montana Pipeline Corporation	mail / courrier

Champion Pipe Line Corporation Limited	514-598-3144
Chief Mountain Gas Co-Op Ltd.	mail / courrier
Cresent Point Resources Ltd	403-693-0070
County of Vermillion River No. 24 Gas Utility	780-846-2716
Delphi Energy Partnership Delphi Energy Corporation	403-265-6207
Denali Canada	mail / courrier
Devon Canada Corporation	keith.fardy@devoncanada.com
DR Four Beat Energy Corporation	406-862-0715
Dome NGL Pipeline Ltd.	Suzanne.Boucher-chen@bp.com
EB Eddy Forest Products Ltd. c/o Domtar Inc.	mail / courrier
Echoex Energy Inc.	403-265-4354
Enbridge Pipelines (Westspur) Inc.	Peter.Taylor@enbridge.com
EnCana Ekwan Pipeline Inc	403-645-3054
EnCana Oil & Gas Company Ltd.	rinde.powell@encana.com
EnerMarck Inc.	403-298-2211
ExxonMobil Canada Properties	902-496-4931
Forty Mile Gas Co-Op Ltd.	mail / courrier
Fraser Papers Inc. (Canada)	506-737-2100
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Holland & Knight	202-955-5564
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ISH Energy Ltd.	403-265-1792

Kaiser Exploration Ltd.	403-265-3161
Keyera Energy Ltd.	403-205-8318
Many Islands Pipe Lines (Canada) Limited	306-565-3332
Mid-Continent Pipelines Limited	306-352-8892
Minell Pipeline Limited	204-475-2452
Montreal Pipe Line Limited	514-645-7663
Murphy Canada Exploration Company	403-233-2565
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Niagara Gas Transmission Limited	tania.persad@enbridge.com
Nova Chemicals (Canada) Ltd.	mcdougcd@novachem.com
NuVista Energy Ltd	403-538-8575
Omimex Canada Ltd.	817-735-8033
Paramount Transmission Ltd	403-262-7994
Peace River Transmission Company Limited	604-697-6210
Pengrowth Corporation	pengrowth@pengrowth.com
Penn West Petroleum Ltd.	403-777-2670
Pioneer Natural Resources Canada	tracey.bell@pxd.com
PMC (Nova Scotia) Company	403-233-0399
Portal Municipal Gas Company Canada Inc.	306-721-9220
Provident Energy Ltd.	rlock@providentenergy.com
SCL Pipeline Inc.	mail / courrier
Shiha Energy Transmission Lt.	tom.hong@paramountres.com
Souris Valley Pipeline Limited	306-848-0293

Spectra Energy Empress LP	mkelly@spectraenergy.com
Spectra Energy Midstream Canada LP	BLMoore1@spectraenergy.com
St. Clair Pipelines Management Inc.	902-425-4592
Suncor Energy Inc.	416-733-8048
Sun-Canadian Pipe Line Company	215-977-3409
Sword Energy Ltd.	403-770-4850
Talisman Energy Inc.	403-237-1902
Taurus Exploration Canada Ltd	mail / courrier
TransCanada Keystone Pipeline GP Ltd.	kristine_delkus@transcanada.com
True Energy Inc.	403-264-8163
Vault Energy Inc.	403-262-5524
Vector Pipeline Limited Partnership	734-462-0231
Wolstitmor Joint Venture	403-513-3750
Yukon Pipelines Ltd.	bhedges@russelmetals.com

(*Interested Parties / parties intéressées*)

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